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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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CYNTHIA J. GILMAN, :

Plaintiff, :

vs. : Case No. 1:13-CV-1716 (KBF)

ROBERT McCARTHY, ALVAREZ & :
MARSAL, TRANSACTION ADVISORY :
GROUP, LLC, MAROLLES, LLC, d/b/a :
BXL CAFÉ EAST, YVES MICHIELS, SHP :
ENTERPRISES, INC. d/b/a ENVY, PETER :
PARK, SUK HUI PARK, 218 EAST 52ND :
STREET RESTAURANT, LLC d/b/a :
NIALL'S ON 52ND, MATTHEW MORAN, :
NIALL P. MORAN, XYZ CORPORATION: :
(names unknown) fictitious corporations, :
limited liability companies or partnerships, :
JOHN DOE and MARY ROE, (names :
unknown), fictitious persons, :

Defendants. :
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DECLARATION OF RICHARD SAFERSTEIN, Ph.D.

1. I am a forensic expert retained by the plaintiff.
2. I have qualified as a toxicological expert and have testified over 2,000 times in

various Courts. My current *curriculum vitae* is attached.

3. In my capacity as Chief Forensic Scientist for the State of New Jersey, I qualified as a toxicological expert and have testified on behalf for the State Police in all death by auto cases in every County in New Jersey during my tenure.

4. In my capacity as a defense expert in drunk driving cases, I have been called upon to review hundreds of videotapes taken by the police of the arrested driver. This has given me the unique opportunity to observe the physical manifestations of the subjects while undergoing testing. I also had the benefit of the blood alcohol readings at the time of my viewing. I therefore have obtained, through experience, an extensive knowledge of the impact of alcohol on humans.

5. I have submitted three reports in this matter which are based upon a reasonable degree of scientific probability and were marked as Exhibits in my deposition.

6. On the evening of March 22 through the early morning hours of March 23, 2011, Robert McCarthy was engaged in a continuous drinking episode in which his blood alcohol level peaked at .29% at approximately 2:30 a.m.

7. The above calculation is based upon the blood test of Robert McCarthy the next morning at approximately 5:40 a.m., when McCarthy was at Jersey Shore University Hospital with a .242% blood alcohol breading. In order for McCarthy to reach that blood alcohol level, he would have to have had the equivalent of a total of twenty-one 12 ounce beers.

8. McCarthy's drinking activities commenced at BXL at 4:30 p.m. on March 22, 2011, with him spending the next five hours there, continuously drinking. McCarthy was engaging in a binge drinking episode and, based upon his testimony, he would start with five, six, seven and after that would not have any recollection. He testified that he believed he had more than five pints of Stella large at BXL but cannot give the exact number.

9. McCarthy's drinking, at the start, would have been more accelerated than later in the evening (Dr. Blum and I are in agreement on this issue). The McCarthy party at BXL consisted of a total of six persons who were served a total of twenty-seven alcoholic drinks. Converting the eight Stella large (16 ounces) to 12 ounce servings, this would be the equivalent of twenty-nine alcoholic beverages served.

10. McCarthy and Francois Chadwick were the only two individuals who were continuously at BXL for the entire five hours. Two of the other guests left earlier and the latter two guests arrived at 7:00 p.m. that evening.

11. Based upon McCarthy's drinking history, and the fact that this was a binge event, it would be reasonable to assume that McCarthy consumed, at BXL, the equivalent of nine 16 ounce servings. I indicated in my testimony that if he consumed more, then, of course, his blood alcohol reading would be higher.

12. McCarthy testified that, while at BXL, he was "buzzed," maybe slurring his words and that he became louder.

13. McCarthy's companion and co-worker, H. Mark Sponseller, testified "we were all drunk." This is significant since Sponseller did not join McCarthy until 7:00 p.m. that evening which would have given McCarthy a two and a half hour head start over Sponseller.

14. McCarthy testified that he experienced a blackout that evening. This is a significant indication of McCarthy's condition, upon leaving BXL, based upon the timing of the blackout. McCarthy times this blackout around the time of his ATM visit in order to withdraw cash to tip the geisha girls at Envy.

15. A further indication of McCarthy's condition post BXL is that he incorrectly recalls the sequence of events based upon the documentary evidence. The BXL credit card

charge is at 9:17 p.m. McCarthy mistakenly believed he left BXL, goes to Envy, then leaves Envy to go to the ATM machine and then returns to Envy with the cash. The ATM receipt indicates that the cash withdrawal was at 9:40 p.m., which would be within ten minutes of his departure from BXL, if he left at 9:30.

16. McCarthy's reaction to the alcohol would indicate that it impacted him as an "average normal" drinker and not an experienced" drinker. An average normal drinker would have manifested visible signs of intoxication at .10% commencing at 7:55 p.m. at BXL as per the attached graph which was attached to my report of July 18, 2014.

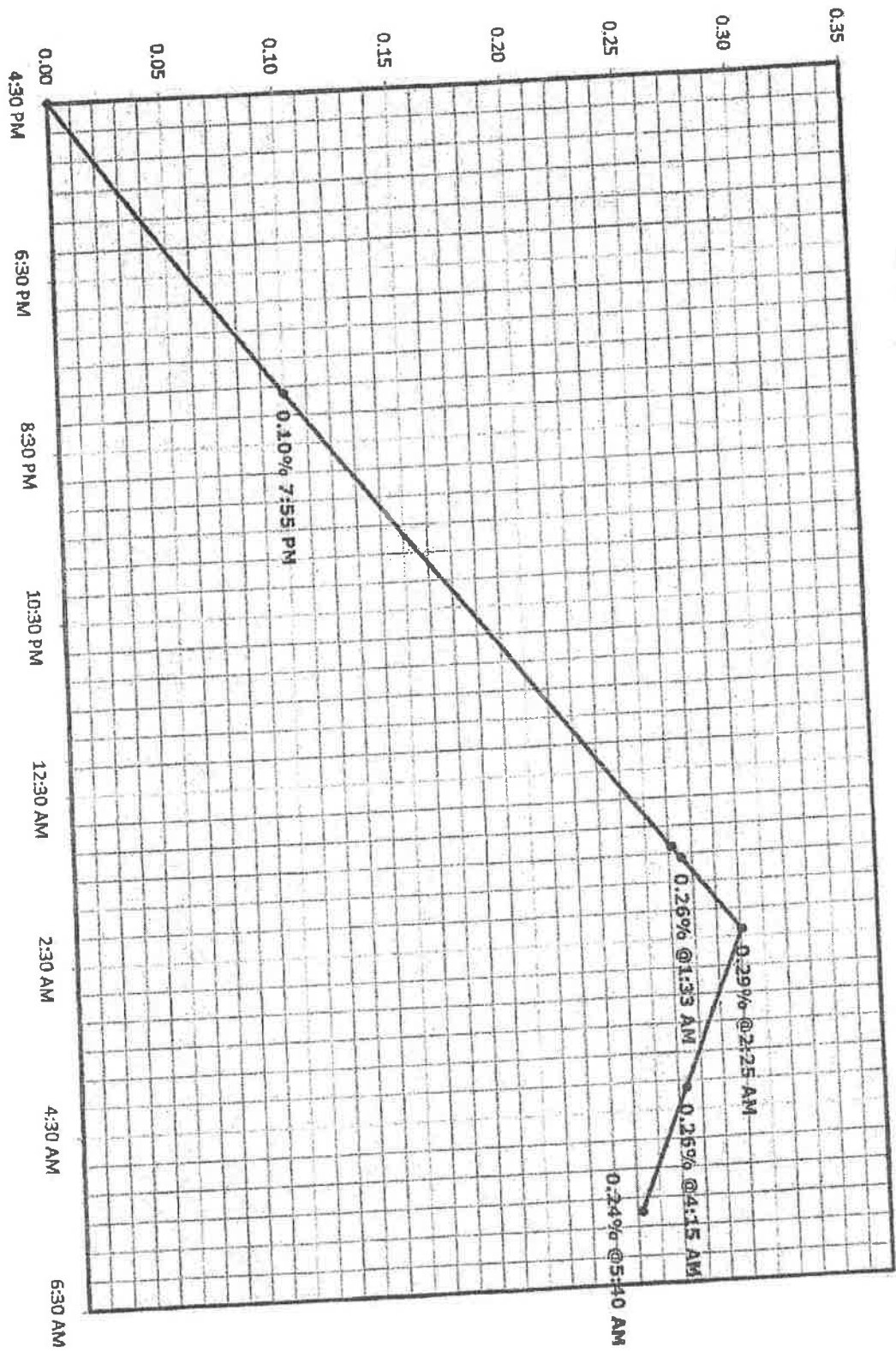
I declare under penalty of perjury that the foregoing is true and correct.

Dated: Mt. Laurel, NJ
September 15, 2014

A handwritten signature in black ink, appearing to read "R. Saferstein", written over a horizontal line.

Richard Saferstein, Ph.D.

Blood Alcohol Conc.-Wt% vs. Time Robert McCarthy



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Chief Forensic Scientist for the State of New Jersey
Department of Law and Public Safety
New Jersey State Police
1970 - 1991

Technical Director of one of the largest forensic science laboratories in the United States, conducting over 35,000 case analyses per year and employing a staff of over 90 professional scientists.

Areas of expertise encompass toxicology, pharmacology and analyses of alcohol and drugs of abuse. I have been accepted and testified as an expert witness over 2000 times in nearly 150 courts on a variety of forensic science issues which include: breath and blood testing for alcohol content, the pharmacological effects of alcohol, detection and identification of drugs in biological fluids, arson-related analyses, and the forensic examination of blood, semen, hair, paint, fiber, and glass evidence. Expertise includes review and evaluation of forensic DNA evidence.

Dr. Saferstein has been certified by Draeger Safety Diagnostics, Inc. as having been trained on the Alcotest® 7110 MkIII-C Version NJ3.11- December 18-19, 2008.

Certified by the State of New Jersey as qualified and competent to conduct chemical breath analyses in the operation of the Breathalyzer (1984 - 1992).

Diplomate – American Board of Criminalistics, 2000 -

ACADEMIC TRAINING

Ph.D. Organic Chemistry, City University of New York - 1970
M.S. Organic Chemistry, City College of New York - 1966
B.S. Chemistry, City College of New York - 1963

ACADEMIC POSITIONS

Instructor of Forensic Science, Law School of Widener University, 1991 - 2011
Instructor of Forensic Science, College of New Jersey, 1972 - 1994
Asst. Adjunct Professor of Science, Ocean County College, 1972 - 1991

PROFESSIONAL AFFILIATIONS

American Academy of Forensic Sciences - Promoted to Fellow, 1977.

American Chemical Society

Canadian Society of Forensic Scientists

Chromatography Forum of Delaware Valley

International Association for Identification

Florida Association for Identification

New York Microscopical Society

Northeastern Association of Forensic Scientists

Society of Forensic Toxicologists

PAST POSITIONS

Analytical Chemist

Shell Chemical Company

Princeton, New Jersey

1969 - 1970

Group leader assigned to perform residue analyses on animal tissues and organs. My duties encompassed the development and implementation of laboratory procedures designed to measure the uptake of pesticides of livestock.

Forensic Chemist

U.S. Treasury Department

Alcohol, Tobacco, and Firearms Laboratory

New York, New York

1964 - 1969

Responsible for the analysis of drug and alcoholic beverage preparation. Testified on numerous occasions as an expert witness in Federal and State courts on alcohol and drug chemistry.

PROFESSIONAL EDUCATIONAL COURSES and WORKSHOPS

Developments in Emerging and Designer Drug Markets 2013

American Academy of Forensic Sciences-2013

DNA Mixture Analysis

American Academy of Forensic Sciences-2011

Opioids

American College of Medical Toxicology-2010

Pharmacology and Pharmokinetics for Forensic Toxicologists

American Academy of Forensic Sciences - 2009

Effects of Drugs on Human Performance and Behavior

Society of Forensic Toxicologists-2008

Advanced topics in STR DNA Analysis
American Academy of Forensic Sciences - 2006

Interpreting Postmortem Toxicology in the Light of Pathological Findings
American Academy of Forensic Sciences - 2005

DNA Polymerase Chain Reaction
The Waksman Institute, Rutgers University - 2004

Forensic Human Mitochondrial DNA Analysis
American Academy of Forensic Sciences - 2004

The Forensic Alcohol Toxicology of Drinking Drivers
The Canadian Society of Forensic Scientists - 2004

Hair analysis for DNA Analysts
The Canadian Society of Forensic Scientists - 2004

Antidepressant Workshop
The Society of Forensic Toxicologists - 2003

Low Copy Number DNA Analysis
American Academy of Forensic Sciences - 2003

Footwear Workshop
International Association for identification - 2002

Is This Driver Impaired by Drugs?
American Academy of Forensic Science - 2002

Mitochondrial DNA
Northwest Association of Forensic Scientists -2001

Drugs, Driving and the Workplace
The Canadian Society of Forensic Science - 2001

Short Tandem Repeat DNA typing
Northwest Association of Forensic Scientists -1998

Forensic DNA Analysis - Polymerase Chain Reaction
Analytical Genetic Testing Center - 1995.

Forensic Alcohol Testing in the Workplace
Society of Forensic Toxicologists - 1995.

Drugs and Driving: Current Pharmacological Issues
Society of Forensic Toxicologists - 1995.

Advanced Forensic Toxicology: Pharmacologic and Interpretative topics
Society of Forensic Toxicologists - 1995.

HONORS

- Recipient of the American Academy of Forensic Sciences 2006 Paul L. Kirk Award for distinguished service and contributions to the field of Criminalistics.
- Award of Merit - American Academy of Forensic Sciences, 1995
- Rosenblatt Memorial Lecturer in Forensic Science, Northeastern Univ., 1994
- Advisory Board member for the Barnett Institute-Northeastern University
- Member of the Editorial Board of the Journal of Forensic Identification 2001 -)
- Member of the Editorial Board of the Journal of Forensic Sciences (1984-1994)
- Member of the Editorial Board of the Microchemical Journal (1988-1995)
- Member of the Editorial Board of the Journal of Analytical and Applied Pyrolysis (1980-1984)

BOOKS PUBLISHED

"Forensic Science: From the Crime Scene to the Crime Lab," (Second Edition)
Prentice-Hall, Upper Saddle River, N.J., 2013.

"Forensic Science: An Introduction," (Second Edition). Prentice-Hall, Upper Saddle River, N.J., 2011.

"Criminalistics - An Introduction to Forensic Science," (Tenth Edition). Prentice-Hall, Upper Saddle River, N.J., 2011.

"Basic laboratory Exercises For Forensic Science," (Second Edition). Prentice-Hall, Upper Saddle River. N.J., 2011.

"Forensic Science Handbook – Volume I," (Second Edition). Prentice-Hall, Upper Saddle River, N.J., 2002.

"Forensic Science Handbook - Volume II," (Second Edition). Prentice-Hall, Upper Saddle River, NJ, 2005

"Forensic Science Handbook - Volume III," (Second Edition). Prentice-Hall, Upper Saddle River, NJ, 2010

"Laboratory Manual for Criminalistics," Prentice-Hall, Upper Saddle River, NJ, 2011.

"More Chemistry and Crime," Oxford University Press, New York, NY, 1997

PAPERS AND ARTICLES PUBLISHED

1. "The Reaction of Halogen-Containing Lewis Acids with Esters" - 1970
(Doctoral Dissertation).

2. "Examination of Automobile Paints by Laser Beam Emission Spectroscopy," Journal of the Association of Official Analytical Chemists, vol. 56 (1973), 1227.
3. "Identification of Drugs by Chemical Ionization Mass Spectroscopy," Journal of the Association of Official Analytical Chemists, vol. 56 (1973), 1234.
4. "Identification of Heroin and its Diluents by Chemical Ionization Mass Spectroscopy," Analytical Chemistry, vol. 46 (1974), 296.
5. "Identification of Drugs by Chemical Ionization Mass Spectroscopy," Journal of Forensic Sciences, vol. 19 (1974), 463.
6. "An Introductory Forensic Science Course in a Law Enforcement Program," in Forensic Science. American Chemical Society (1975), 22-27.
7. "Isobutane Chemical Ionization Mass Spectrographic Examination of Explosives," Journal of the Association of Analytical Chemists, vol. 58 (1975), 734.
8. "Pyrolysis Mass Spectrometry - A New Forensic Science Technique," Journal of Forensic Sciences, vol. 22 (1977), 748.
9. "The Forensic Identification of Heroin," Journal of Forensic Sciences, vol. 23 (1978), 44.
10. "Drug Detection in Urine by Chemical Ionization Mass Spectrometry," Journal of Forensic Sciences, vol. 23 (1978), 29.
11. "Routine Separation and Identification of Drugs of Abuse by GC/IR," American Laboratory, vol. 10 (1978), 125.
12. "Drug Detection in Urine by Chemical Ionization Mass Spectrometry - II," Journal of Analytical Toxicology, vol. 2 (1978), 245.
13. "Chemical Ionization Mass Spectrometry of Morphine Derivatives," Journal of Forensic Sciences, vol. 24 (1979), 312.
14. "Criminalistics - A Look Back at the 70's; A Look Ahead to the 80's," Journal of Forensic Sciences, vol. 24 (1979), 925.
15. "Forensic Applications of Mass Spectrometry," in Forensic Science Handbook (edited by R. Saferstein), Prentice-Hall, Upper Saddle River, N.J. (1982), 92-138.
16. "Applications of Dynamic Headspace Analysis to Laboratory and Field Arson Investigation," Journal of Forensic Sciences, vol. 27 (1982), 484.
17. "Forensic Science," Analytical Chemistry, vol. 55 (1983), 19R.
18. "Forensic Science - Winds of Change," Chemistry and Crime, (edited by Samuel Gerber) American Chemical Society, Washington, D.C. (1983), 39-43.
19. "Forensic Aspects of Analytical Pyrolysis," Pyrolysis and GC in Polymer Analysis (edited by S.A. Liebman and E.J. Levy), Marcel Dekker, New York (1985), 339-71.
20. "Forensic Science," Analytical Chemistry, vol. 57 (1985), 175R.
21. "Forensic Science: A Strategy for Teaching Science in a Liberal Arts Curriculum," in Forensic Science, 2nd Ed., (edited by Geoffrey Davies), American Chemical Society, Washington, D.C., 1986, 51-65.
22. "Forensic Analytical Pyrolysis," Proceedings of the International Symposium on the Analysis and Identification of Polymers, U.S. Government Printing Office, Washington, D.C., (1986), 9-20.

23. "Experimental Evidence of AcO-7 Neighboring Group Participation," Tetrahedron, vol. 43 (1987), 5089.
24. "Forensic Science," Analytical Chemistry, vol. 59 (1987), 162R.
25. "Dual Column Pyrolysis Gas Chromatography," Crime Laboratory Digest, vol. 15 (1988), 39.
26. "Forensic Science," Analytical Chemistry, vol. 61 (1989), 95R.
27. "The Scientific Explanation of Intoxication and The Use of the Breathalyzer," The Drunk Driving Case: From Municipal Court To Supreme Court, New Jersey Institute for Continuing Legal Education, New Brunswick, N.J., (1989), 163-86.
28. "Forensic Science," Analytical Chemistry, vol. 63 (1991), 148R.
29. "DNA Fingerprinting," Chem Matters, vol. 9, no. 3 (1991), 10.
30. "Mouth Alcohol, Denture Adhesives and Breath - Alcohol Testing," Drunk Driving Liquor Liability Reporter, Vol. 6, no. 2 (1992), 24.
31. "Forensic Science," Analytical Chemistry, vol. 65 (1993), 293R.
32. "The Theory and Operation of the Breathalyzer," in DWI: 1994, Handling the Drunk Driving Case In New Jersey, New Jersey Institute for Continuing Legal Education, New Brunswick, N.J., (1994), 407-20.
33. "Forensic Science," Analytical Chemistry, vol. 67 (1995), 273R.
34. "The Theory and Operation of the Breathalyzer," in DWI:1996, Handling Drunk Driving Cases in New Jersey, New Jersey Institute for Continuing Legal Education, New Brunswick, N.J., (1996), 451-68.
35. "Forensic Science," Analytical Chemistry, vol. 69 (1997), 123R.
36. "Forensic Science," Analytical Chemistry, vol. 71 (1999), 235R.
37. "The Significance of DNA in Criminal Investigations," in Using Experts for Evaluating & Preparing Criminal Cases, New Jersey Institute for Continuing Legal Education, New Brunswick, N.J., (1999), 65-78.
38. "Forensic Applications of Mass Spectrometry," in Forensic Science Handbook, Vol. I, 2nd ed. (edited by R. Saferstein), Prentice-Hall, Upper Saddle River, N.J. (2002), 118-159.
39. "Forensic Science," Analytical Chemistry, vol. 73, (2001), 2735.
40. "Evaluation of a Reflected Ultraviolet Imaging System for Fingerprint Detection," Journal of Forensic Identification, 51 (2001), 385.
41. "Forensic Science," Analytical Chemistry, vol. 75, (2003), 2877.
42. "Forensic Science," Analytical Chemistry, vol. 77, (2005), 3839.
43. "General Understanding of the Alcotest 7110 MKIII-C," in DWI in the 21st Century: New Breath Test, New Statutes, New Rules, New Jersey Institute for Continuing Legal Education, New Brunswick, N.J., (2005), 133-39.
44. "Evidence Collection and Preservation," in Forensic Nursing, (edited by V.A. Lynch), ElsevierMosby, St. Louis, M.O. (2006), 101-108.
45. "Principles of Forensic Evidence Collection and Preservation," in Forensic Nursing (second edition), V.A. Lynch and J.B. Duval, eds., ElsevierMosby, St. Louis, M.O. (2011), 54-60.